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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,488	03/08/2001	Eiichi Takahashi	1046.1245	2200
21171	7590	08/29/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			LAZARO, DAVID R	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/800,488

Applicant(s)

TAKAHASHI ET AL.

Examiner

David Lazaro

Art Unit

2155

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9 are rejected as set forth in the previous office action mailed 05/04/05.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Bharat Barot
BHARAT BAROT
PRIMARY EXAMINER

David Lazaro
David Lazaro
August 24, 2005

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue on page 5 - "In contrast to the present invention, Borella sepecifically states that network congestion is determined by the absence of acknowledgement of packets, not by a communication data size, as in the present invention"

Examiner's response - Each packet has an associated size (Col. 7 lines 57-67). As such, if you have an absence of acknowledgement packets, you can determine a communication data size of the connection based on the absence of such packets (Col. 8 lines 35-47 and Col. 9 lines 44-47). The examiner considers this to be sufficently within the scope of the limitation "a communication data size" as examiner are supposed to give a broadest reasonable interpretation of the claims (See MPEP 2111). If applicants feel such an interpretation is too broad, the examiner suggests that any future amendments should in part, clarify the scope and meaning of "a communication data size".

Applicants argue on page 5 - "In contrast, Borella's "cwnd" value is utilized to assist in a solution to network congestion, that is, to assist in adjusting the rate of packet injection into the network and does not correspond to a maximum value of the present invention."

Examiner's response - The "cwnd" value is interpreted as corresponding to the the communication data size as it is "the maximum number of outstanding bytes allowed in the data network" (Col. 8 l ines 40-41). This is a maximum value at a current point in time. There is further, a maximum value associated with the "cwnd" value that is indicative of the a the highest value the "cwnd" value may reach (Col. 9 lines 50-54, the ssthresh). This value (ssthresh) corresponds to the highest throughput that may be achieved/allowed. As such, when the "cwnd" value decreases from this value (ssthresh), there is considerably higher load on the network. The examiner considers this to be sufficiently within the scope of the claimed subject matter.

Applicants argue on page 6 - "Borella is silent as to the feature of claim 3"

Examiner's response - The cwnd value is initially set to an initial window value that does not take into consideration the start of communication. Obviously, at the end of a communication, communications have stopped. As such there is no "communication data size". The examiner considers this to be sufficiently within the scope of the claimed subject matter of claim 3 as "a start and end of the connection" can be broadly interpreted as dictated by MPEP 2111.

Applicants argue on page 6 - "Thus Georgiadis suggests that computer congestion is determined by monitoring each computer to determine an amount of time each transaction on the computer will take, not by a "communication data size of the connection", as in the present invention".

Examiner's response - Georgiadis states congestion is directly related to throughput being smaller than arrival rate (Page 5 lines 14-17). This relationship includes the incoming load as it effects queues and overfilled buffers (Page 5 lines 14-17). The examiner considers the arrival rate, queues and overfilled buffers to all be indicative of "a communication data size" as claimed. The examiner considers this to be sufficiently within the scope of the limitation "a communication data size" as examiner are supposed to give a broadest reasonable interpretation of the claims (See MPEP 2111).